SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 397.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

THE FRANK BROTHERS COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	1
Summons	3	2
Certiorari	5	2
Notice of appearance and demand	7	3
Complaint	9	3
Bill of particulars	13	4
Answer	15	5
Minutes of trial	20	6
Judgment	22	6
Bill of exceptions	25	7
Testimony of August Frank	26	7
Charles B. Frank	28	8
Semour Hait	44	16
Charles B. Frank (recalled)	47	18
Alonzo E. Garner	56	22
David C. Sturges	56	22
Henry E. Wessels	57	23
George H. Richardson	64	26
Defendant's requests	86	39
Charge to jury	88	40
Exceptions to charge	98	44
Assignment of errors	105	46
Citation	108	47
Proof of service of citation	109	47

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between The Frank Brothers' Company, plaintiffs, and William H. Robertson, defendant, a manifest error hath happened, to the great damage of the said William H. Robertson, as by his complaint appear. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October, 1885, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 3d day of October, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

The foregoing writ is hereby allowed.

ADDISON BROWN,
U. S. D. J.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 3 to 109, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William H. Robertson, plaintiff in and against the Frank Brothers' Company, defendant in error, as the same remains on record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 9th day of October, in the year of our Lord eighteen hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Indorsed:) 8231. U. S. Supreme Court. William H. Robertson, plaintiff in error, against The Frank Brothers' Company, defendant in

error. Writ of Error. Wm. Dorsheimer, attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted, this 3d of October, 1885.

W. B. COUGHTEY,
Attorney for Defendant in Error.

3 Supreme court, county of New York.

The FRANK BROTHERS COMPANY, PLAINTIFF,
ag'st
WILLIAM H. ROBERTSON, COLLECTOR OF THE port of New York, defendant. } Summons.

To the above-named defendant.

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint. Dated Nov. 6th, 1882.

W. B. COUGHTEY,
Plaintiff's Attorney.

4 Post-office address and office No. 167, Broadway, New York City.

(Endorsed:) N. Y. supreme court. The Frank Bro's Co., plaintiff, ag'st W. H. Robertson, coll'r, &c., defendant. Summons. W. B. Coughtey, plaintiff's attorney. Due service of a copy hereof is hereby admitted this 6th day of Nov., '82. C. W.

5 The President of the United States of America to the judges of the supreme court of the State of New York, greeting:

[L. S.]

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against William H. Robertson, defendant, by The Frank Brothers' Company, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 25th day of November, 1882, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the 21st day of November, in the year one thousand eight hundred and eighty-two.

JOSEPH M. DEUELL,
Clerk.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

6 I have this day personally served upon the clerk of the supreme court of the State of New York a duplicate of the within writ, at the same time showing the original.

HENRY E. KNOX,
U. S. Marshal.

Dated Nov. 23d, 1882.

(Indorsed:) U. S. circuit court. The Frank Brothers' Company versus William H. Robertson. Certiorari. Stewart L. Woodford, United States attorney, attorney for defendant. I hereby depute ——— ——— to serve the within writ. Dated ———, 188–. ——— ——— U. S. marshal. U. S. circuit court. Filed Nov. 24, 1882. Joseph M. Deuell, clerk.

7 N. Y. supreme court.

THE FRANK BROTHERS COMPANY *vs.* WILLIAM H. ROBERTSON. } Notice of appearance and demand.

You will please take notice that I am retained by and appear as attorney for the defendant in this action, and demand service of a bill of particulars of the plaintiffs' claim herein and a copy of the complaint and all papers in this action upon me, at my office in the United States court and post-office building in the city of New York.

Yours,

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

NEW YORK, *Nov. 18th*, 1882.

To W. B. COUGHTRY,
Attorney for Plaintiff.

8 (Endorsed:) N. Y. supreme court. The Frank Brothers Company *vs.* William H. Robertson. Notice of appearance. Stewart L. Woodford, U. S. attorney, attorney for defendant. To W. B. Coughtry, plaintiffs' attorney. Rec'd Nov. 18, '82.

9 Circuit court of the United States for the southern district of New York.

THE FRANK BROS. COMPANY, PLAINTIFFS, *vs.* WILLIAM H. ROBERTSON, COLLECTOR OF the port of New York, defendants. } Complaint.

Plaintiffs' complaint.

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2nd. That plaintiffs were, during said times, a corporation duly organized under the laws of the State of Connecticut, and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

10 3rd. That by the laws of the United States the true duty upon said goods was to be computed upon amounts and values and additions less than those returned by the appraisers as required by them; but plaintiffs, in order to obtain said goods, were compelled to pay, and did pay, the defendant as such collector the sum of two thousand and fifty-five $\frac{32}{100}$ dollars in excess of the amount required by law.

4th. That plaintiffs filed with said defendant due and timely protests, in writing, upon each entry of said goods against his decision exacting such duty, setting forth, distinctly and specifically, the grounds of objection thereto, and also as above stated.

11 5th. That plaintiffs made due and timely appeals on such entry to the Secretary of the Treasury, who affirmed the decision of the defendant upon certain of said entries, and as to the rest neglected for more than ninety days, as well from the dates of said appeals as prior to the commencement of this action, to decide said appeals.

6th. That the bill of particulars hereto annexed states for each importation separately the various particulars required by law and section 3012, Rev. Stat. of the United States, and is made a part hereof.

7th. That said sum so exacted, as aforesaid, has never been repaid to plaintiffs and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for two
12 thousand and fifty $\frac{32}{100}$ dollars, with interest from the several dates of payment, together with costs and disbursements of this action.

W. B. COUGHTRY,
Plaintiffs' Att'y, 167 *Broadway, N. Y.*

13 *Plaintiffs' bill of particulars of importation made at New York by the Frank Bros. Co. (referred to in annexed complaint).*

[Description of merchandise, bananas, &c. Country whence imported. U. S. of Col.]

Name of vessel.	Date of invoice	Date of entry.	Date of paying duty.	Am't of excess claimed.	Date of filing protest.	Date of appeal.	Date of Sec'y dec'n.
	1881.	1881.	1881.		1882.	1882.	1882.
Ailsa	Sept. 28	Oct. 8	Oct. 8	146	Jan. 6	Jan. 6	.....
Colon	Oct. 6	" 18	" 18	140. 05	" "	" "	.....
Alene	" 22	" 21	" 21	188. 40	" "	" "	.....
C. of Para	" 16	" 27	" 27	97. 72	" "	" "	.....
Alvo	" 27	Nov. 7	Nov. 7	138. 90	" "	" "	.....
Ailsa	Nov. 9	" 21	" 21	184. 10	" "	" "	.....
Colon	" 16	" 26	" 26	63. 60	" "	" "	.....
Acapulco	" 24	" 3	" 3	60. 20	" "	" "	.....
Alene	" 22	" 3	" "	93. 80	" "	" "	.....
	1882.	1882.	1882.				.....
Acapulco	Jan. 25	Feby. 4	Feby. 4	68. 85	Mch. 31	Mch. 31	Aug. 8
Alio	" 28	" 8	" 8	99. 40	" "	" "	" "
C. of Para	Fe'y. 8	" 14	" 14	69. 20	" "	" "	" "
Ailsa	" 11	" 23	" 23	162. 10	" "	" "	" "
Colon	" 16	" 27	" 27	88. 20	" "	" "	" "
Acapulco	" 25	Mch. 7	Mch. 7	112. 80	" "	" "	" "
Alene	Mch. 1	" 13	" 13	142. 40	" "	" "	" "
Alvo	" 11	" 22	" 22	109. 90	" "	" "	" "
C. of Para	" 8	" 18	" 18	90. 70	" "	" "	" "

14 (Endorsed): No. 8231. U. S. circuit court. The Frank Brothers Co. W. H. Robertson, coll'r, &c. Complaint and bill of particulars. Stewart L. Woodford, esq., U. S. att'y for def't. Please take notice that the within, the pl'ffs complaint and b. of par. in the above entitled action. Dec. 18, 1882.

15 United States circuit court, southern district of New York.

THE FRANK BROTHERS COMPANY
vs.
W. H. ROBERTSON, COLLECTOR, &C.

The answer of the defendant herein by Stewart L. Woodford, his attorney, to the complaint of the plaintiff in the above-entitled action:

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and in such official capacity received payment from the plaintiff for and on account of duties due to the United States under the laws thereof, upon certain importations of merchandise imported by said plaintiff into the port of New York from foreign countries.

16 II. He alleges that any and all moneys received by him from plaintiff at the times in said complaint mentioned were paid by said plaintiff as a debt due by him to the United States, and not otherwise; and were received by defendant by virtue of his office as said collector and under the direction of the Secretary of the Treasury, and for and on account of the United States, and were forthwith thereafter, and before the commencement of this action or the service of any protest, paid into the Treasury of the United States; and that the amount of said moneys so received from plaintiff were the amount due from him to the United States, according to the rate of duty imposed by law upon the several articles of merchandise by him imported and assessed

17 with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiff's import entry thereof were collected or received by defendant from the plaintiff.

III. And defendant further answering denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint by the marks and numbers and description there given, except in so far as to state, and defendant herein answering doth aver and state, that said merchandise was not dutiable according to the laws of the United States at the rates specified in the complaint.

IV. And defendant further answering admits that plaintiff filed

18 with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiff conformable to the laws of the United States, and defendant leaves plaintiff to make such proof thereof as he may be advised.

V. And as to any other allegations in said complaint contained not hereinbefore fully answered or admitted, defendant denies the same, and each thereof, and leaves the plaintiff to make such, proof thereof as he may be advised.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

19 (Endorsed:) 8231 U. S. circuit court, southern district of New York. The Frank Brothers Company *vs.* W. H. Robertson, collector, &c. Answer. Stewart L. Woodford, United States attorney, attorney for defendant. W. B. Coughtry, plaintiff's attorney.

20 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Friday, the 23d day of January, in the year of our Lord one thousand eight hundred and eighty-five.

Present: The Honorable Hoyt H. Wheeler, acting circuit judge.

THE FRANK BROTHERS COMPANY
v.
WM. H. ROBERTSON. } 8231.

Now comes the plaintiff, by Tremaine & Tyler, esqs., its attorneys, and moves the trial of this cause; likewise comes the defendant, by Sam'l B. Clark, esq., ass't district attorney, his attorney. Thereupon a jury is empaneled and the cause proceeds to trial. After hearing the evidence of the parties, the argument of counsel, and the instructions of the court, on Tuesday, the 27th day of January, 1885, the jury retire, and on their return render a verdict whereby they find for the plaintiff in the sum of $2,259.\frac{74}{100}$.

21 On motion of counsel for the defendant the court orders that a certificate of probable cause be entered herein and that the defendant have a stay of proceedings on said verdict for thirty days.

A copy.

TIMOTHY GRIFFITH,
Clerk.

22 United States circuit court for the southern district of New York.

THE FRANK BROTHERS COMPANY
against
WILLIAM H. ROBERTSON. }

The issues in the above action having been brought on for trial before the Hon. Hoyt H. Wheeler, a district judge sitting as a circuit judge, and a jury, at a trial term of said court, held at the city of New York, in said district, on the 23d, 26th, and 27th days of January, 1885; and the issues having been treid and a verdict for plaintiff having been rendered, and the amount due under said verdict being found to be two thousand

23 and two hundred and fifty-nine dollars and seventy-four cents ($2,259.\frac{74}{100}$), and the costs having been taxed and adjusted at forty-six $\frac{85}{100}$ dollars ($46.\frac{85}{100}$):

Now, on motion of William B. Coughtry, esq., attorneys for plaintiffs, it is ordered and adjudged that the plaintiff recover of the defendant the sum of two thousand and two hundred and fifty-nine dollars and seventy-four cents ($2,259.\frac{74}{100}$) damages and forty-six $\frac{85}{100}$ dollars ($46.\frac{85}{100}$) cost, amounting altogether to the sum of two thousand three hundred and six dollars and fifty-nine cents ($2,306.\frac{59}{100}$), and that plaintiffs have execution therefor.

Judgment signed this 30th day of September, A. D. 1885.

JOHN A. SHIELDS,
Dep'ty Clerk.

24 (Endorsed:) 8231. U. S. circuit court. The Frank Brothers Company ag'st Wm. H. Robertson. Judgment roll. Wm. B. Coughtry, plaintiff's att'y, No. 167., B'way. U. S. circuit court; filed Sept. 30th, 1885. Timothy Griffith, clerk.

25 United States circuit court, southern district of New York.

THE FRANK BROTHERS COMPANY
vs.
W. H. ROBERTSON, COLLECTOR. } Bill of exceptions. N. S. 8231.

And afterwards, to wit, on the 23d, 26th, and 27th days of January, 1885, this case came on to be tried before the Honorable Hoyt H. Wheeler, district judge of the United States for the district of Vermont, duly assigned to hold this court, and a jury duly empanelled and sworn to try the issues herein, the action having been brought to recover duties alleged to have been illegally exacted by the defendant as collector of the port of New York upon certain alleged extra or illegal transportation and labor charges upon goods imported by the plaintiff. The parties appearing by their counsel, Henry E. Tremain and W. B. Coughtry, esqs., for the plaintiff, and Samuel B. Clarke, esq., assistant United States attorney, for the defendant.

The plaintiff's counsel having opened his case to the jury, put in evidence tending to show that during the fall of 1881 and early in 1882 the plaintiff was engaged in the importation of bananas from the port
26 of Aspinwall, in the United States of Columbia, to New York, and that shipments of bananas were made to them by the Colon, October 18th, 1881, and at various times thereafter by steamers of the Pacific Mail Steamship Co., and the Atlas Line, and that certain ship for handling the bananas before they were finally stored in the vessels were paid for by the plaintiff upon each of the severa

Mr. August Frank, a witness on the part of the plaintiff, asked as to the method employed in the shipment of plainti tions and the estimated invoices which were sent with the goods, the defendant by his counsel objected to the question as immaterial and incompetent, and the same having been overruled by the court, the defendant then and there duly excepted, and the witness stated that the ships by which their goods were imported frequently left the port of shipment after the consular office in that port had been closed for the day; and that in order to send invoices which would be certified by the consul with the goods it was necessary to estimate the charges that had been incurred before the report of the actual expenses was received, and that, by long experience, they were able to approximate very closely to the actual expense, and that in all cases the estimated charge stated on said invoices sent with the goods of four cents per bunch for the large and two cents for the
27 small bunches, exceeded the actual expenses; that the bananas came in part from the surroundings of Aspinwall and in part from different stations lying along the line of the Panama Railroad, and that in making up their charges nothing was ever added to cover the cost of bringing the fruit to Aspinwall.

Mr. Frank was then asked to state by what means he finally arrived at the actual labor charges in each particular instance, and the counsel for the defendant having objected to the question as immaterial and having been overruled by the court and having duly excepted, the witness stated that after the steamers had sailed the laborers were paid and that the amount so expended constituted the actual charges; that as to the charges

which were paid on the importations by the Colon, Oct. 18, 1881, the Aline, Oct. 21, 1881, the City of Pera, Oct. 27, 1881, the Alvo, Nov. 7, 1881, and the Alsa, Nov. 21, 1881, the witness had no personal knowledge of his own, but that he did know as to the exact amount paid for charges in all the remaining invoices contained in plaintiff's bill of particulars.

The witness was then asked to state what was the principal market of the country of exportation, and the counsel for the defendant having duly objected to the question as immaterial and upon the ground that it was for the appraiser to determine what the principal market was, and having been overruled by the court, then and there excepted. The witness replied that it was Aspinwall which in this case was the port of shipment.

28 CHARLES B. FRANK, being duly sworn and examined as a witness for the plaintiffs, testifies:

By Mr. TREMAIN:

Q. You are one of the officers of the plaintiffs' corporation of Frank Bros. Company?

A. Yes, sir.

Q. And you, during the years 1880 and 1882, had charge of the business in the city of New York, or the general charge of the business between New York and Aspinwall?

A. I had charge of the New York business.

Q. From time to time did you receive shipments of bananas during that period from Aspinwall?

A. I did.

Q. Was the delivery to the plaintiffs of those bananas, and the payment of the duty thereupon conducted by you, or under your direction?

A. It was done under my direction.

Q. Did you from time to time receive advices from Aspinwall in the regular course of business touching special importations which were designated in the questions to the previous witness?

A. I did.

Q. State what was the nature and character of those advices and how the business in respect to these shipments was conducted?

(Objected to.)

Q. What did you do in respect to these shipments?

A. The shipment as it arrived was accompanied by an estimated invoice. I took that to the custom-house and paid my entry upon it.

29 Q. Is that all the information that you had then received in respect to the correct quantity of these bananas?

A. Yes, sir.

Q. And all the charges upon them?

A. Yes, sir.

Q. Did you cause protest to be made, or did you give any direction in respect to protest upon these importations?

A. I did.

Q. Did you make entry at the custom-house on the importations specified in the questions to the previous witness and pay duties to the collector, Robertson, upon those importations?

A. There are more than one who makes custom-house entries in the concern. Unless I refer to the papers I cannot tell.

Q. Where it was not done by you personally in respect to these entries was it done under your direction?

A. It was done by Mr. Hait or myself.

Q. Will you state on what amount of charges of any kind, before designating them, you paid duty on these importations?

By DEFENDANT'S COUNSEL:

Q. Did you pay the duty yourself to the collector?

Mr. TREMAIN. It was either paid by him or under his direction.

(Question objected to on the ground that it does not appear that the witness paid the charges referred to.

Objection overruled. Exception.)

30 Answer. Invariably in making an entry at the custom-house check was made out for the correct amount of the duty, which I, as president of the concern, had to sign the check.

By the COURT:

Q. Who made out the check?

A. The cashier made it out and I signed it.

Q. For what?

A. For the actual amount of the duty paid on that importation.

(Defendant's counsel objects, as the witness is not competent, on his own statement, to answer the question what he paid as duties.)

By Mr. TREMAIN:

Q. Upon the importations specified you signed checks for the duties?

A. Yes, sir.

Q. And gave them to whom?

A. Gave them to the cashier, who drew the money out of the bank, delivered it either back to me or back to the treasurer, who went over to the custom-house to make the entry and pay for it.

Q. Entries made either by you or by Mr. Hait?

A. Yes, sir.

Q. And the duties that were paid were made either by or under the direction of the person who made the entry?

A. Yes, sir.

Q. The checks for those, having been previously drawn, were signed by you?

A. Yes, sir.

By Mr. CLARKE:

Q. Did you pay them, or did Mr. Hait or the broker pay them?

(Objected to.)

31 By Mr. TREMAIN:

Q. Did you pay at and after the rate of ten per cent.?

A. Ten per cent. ad valorem.

Q. Please state in respect to the amounts on these several payments; upon what amount of charges you paid duties or drew the checks.

(Objected to.)

The COURT. Of course the plaintiffs cannot prove their case by one witness or upon one question. I understand the witness to say he drew checks for the amounts. Now, that don't prove anything, unless they

show that the defendant got the money. If they do not prove the defendant got the money they will not get any verdict. You cannot compel the plaintiffs to prove their case at one step and, as I say, by one witness. He may answer the question.

(Defendant excepts.)

Answer. The invoice had an estimated amount of charges. The appraiser added to that enough to make up 5 cents per bunch all around, and furthermore, he added the inland transportation charges. Shall I go on?

By Mr. TREMAIN:

Q. Certainly. I want to know the amount you paid out and how that amount was arrived at, and the estimates.

A. On the invoice which was rendered October 18th, 1881, per Colon.

(Objected to on the ground that the witness has stated as to some of the amounts in question he paid and some that Mr. Hait paid and the custom-house broker.

32 The WITNESS. I don't know whether I paid that duty.

Q. Did you ask if that duty had been paid, and, if so, to whom?

A. I asked the calculations to be made by the book-keeper, and Mr. Hait went to the custom-house and made the entry.

Q. Did you supervise the calculations?

A. I did in every case.

Q. What were the calculations by which your check of the Colon was based?

(Objected to as immaterial. Objection overruled. Exception.)

Answer. The invoice represented a certain number of large bundles and small bundles, and charges were based upon that amount, with the amount as correct by the number of bundles, large or small, that was landed here. Upon those numbers we paid duty; upon those charges. The charges were figured 5 cents a bunch, and also the freight charges. The inland freight charges were figured the same way, as required by the appraiser.

Q. That being required by him?

A. By the appraiser. $2\frac{1}{2}$ commission in the usual way after that and 10% amount of duty paid. Of course part of it was in Columbian pesos at $82\frac{3}{10}$ and had to be transferred into American money first.

By the COURT:

Q. What did you say about the $2\frac{1}{2}$%?

A. $2\frac{1}{2}$% were added. That was the duty.

33 By Mr. TREMAIN:

Q. State what you did in respect to the payment of duties upon the importations specified in the questions to the previous witness.

A. Can I see one of the importations?

Q. Yes, sir; you can take all your papers, if you choose?

A. (Referring to papers.) The Colon, she was landed here October 18th. The invoice called for 7,842 bundles of bananas of large at 50 cents, and 2,438 small at 25 cents, and the labor charges were 362.44, Columbian money. In landing those bananas we found on board only 7,722 large bundles and 2,391 small bundles; labor charges, as previously stated, being 362.44. The appraiser, in order to arrive at his figures, multiplied the

total number of bundles by five and added on the difference between 362.44 and that figure which was in this case 505.65, Columbian money. That brought a total of 4,964.40, which at $82\frac{3}{10}$ reduced it to American money, and made $4,085.70. To that, transportation charges were added as required by the appraiser.

Q. What did he require in that case?

A. He required 14 cents for large and 7 cents for small bundles.

Q. Apiece?

A. Yes, sir; making in all the charges $1,248.45, added to the previous amount, makes $5,334.15, and $2\frac{1}{2}$ per cent. commission on that is $133.35, making a total difference of $5,467.50; 10 per cent. of that is $546.80.

Q. And the amount of your check for those differences therefore was?

A. $546.80.

34 Q. Have you made a calculation at our request for the charges, or stated what would be the amount of duty on those charges separately from the rest of the invoice?

A. I did not make it myself, but it was made under my supervision.

Q. You had a calculation made, did you not, based upon estimated invoices which were sent to you with the cargoes, and the true invoices which subsequently came?

A. Yes, sir.

Q. And the check for which you paid for that amount?

A. I do not think the check was on that.

The COURT. I do not understand that.

Mr. TREMAIN. He had a calculation made, he said, based, first on the estimated invoice, and then upon the true invoice that actually came.

Q. And what else was it based upon?

A. Upon inland transportation charges; it was simply based upon the matter of charges.

Q. That calculation was based on the matter of charges only?

A. Yes, sir.

Q. Will you please state to the jury why you were required to add any charges, or what was required of you in that respect, in order to get your goods, resulting in this—what do you say—fourteen cents for large and seven for small bunches?

A. Yes, sir; that is, the appraiser told us it was required to pay duty on inland charges. They imposed upon us penalties in addition in

35 a number of cases, and we were finally compelled by sheer force to submit, because the amounts were running up to very large figures, so we put those on under protest. As regards the labor charges, I had several conversations with the appraiser; he said our estimated charges were entirely too low, and he thought five cents per bunch was low enough. We figured at that amount, and we proposed to test the case, but he put upon us penalties and additions; but we finally gave in and paid it under protest.

Q. To avoid penalty and delay? (Not answered.)

By Mr. CLARKE:

Q. Is that one of these importations in this case?

A. What, sir?

Q. Where you say that——

(Plaintiffs' counsel objects to defendants' counsel examining the witness at this stage of the proceedings.)

By Mr. TREMAIN:

Q. Now in respect to the payments, were the payments of duty in all instances based upon those of inland charges and of labor charges, so far as your calculations in that respect went?

(Objected to as incompetent and immaterial. Objection overruled. Defendant excepts.)

Answer. They were all based upon the additional charges for labor as well as for transportation.

Q. While we are about it, let us see what we can prove in the way of payment. Wherever you paid the duty yourself you may as well state that fact, or if it was paid immediately on your direction and
36 knowledge state the fact in respect to each special importation.

A. That is impossible for me to say unless I should swear on information; and even then I don't know that I can say that I paid any duties myself. I handed the money over to the broker, and he paid the money.

Q. Can you tell by looking at the invoice?

A. No, sir; not these.

Q. Did you say that you received personally the estimated invoices that were sent by your brother?

A. Yes, sir.

Q. How long afterwards was it before you received the true invoice, as a general thing?

A. The following steamer, as a general thing.

Q. Do you remember any instances where the amount of the charges on the true invoice was greater than the amount stated on the estimated invoice?

A. In no case.

Q. It was always the other way?

A. Always the other way.

Q. These goods were actually bought in Aspinwall and paid for?

A. Yes, sir.

Q. Did these invoices upon which you have made entry in the custom-house represent the amount you actually paid for them?

(Objected to as immaterial. Question withdrawn for the present.)

37 Q. These invoices represented actual transactions, did they not?

A. Yes, sir.

Q. Have you a duplicate of the estimated invoice upon which you made entry at the custom-house?

A. Yes, sir.

Q. Have you it with you on these importations?

A. Yes, sir.

Q. And have you the true invoices that subsequently arrived upon these special importations?

A. Yes, sir.

(The invoices above referred to are offered in evidence.)

Q. Those estimated invoices were received by you in duplicate?

A. Yes, sir.

Q. One went to the custom-house, the other you keep?
A. Yes, sir.
Q. How is it with the true invoices?
A. We keep them simply on record and compare them later with the account current sent from Aspinwall.
Q. You receive accounts current in the regular course of business from Aspinwall?
A. We do.
Q. Did those accounts current relate to actual payments touching these shipments?
A. They did.
Q. For labor charges or for the goods themselves?
A. Yes, sir; related simply to the total amount of actual invoices sent to New York, which in itself included all labor charges and all charges for bananas shipped.

38 (Plaintiff's counsel offers the estimated invoice and the true invoice in evidence.)

Mr. TREMAIN. We offer one of each.
The WITNESS. I simply withdraw the first because there is nothing due on it.
Mr. CLARKE. Because what?
Mr. TREMAIN. Because we make no claim on the Ailsa.
Mr. CLARKE. I ask that the offer be separated.

By Mr. TREMAIN:

Q. (Showing witness papers.) Are these the estimated ones?
A. Yes, sir.
(The estimated invoices are offered in evidence.)

By Mr. CLARKE:

Q. I understand that at the time you received each of these you received a certified consular invoice?
A. Yes, sir.
Q. And that these were copies of those?
A. Yes, sir.
Q. And the consular invoice is the one upon which you entered the goods at the custom-house?
A. Yes, sir.
Q. Do you know that this is a copy of it?
A. Yes, sir.
Q. And of your own knowledge?
A. Yes, sir.
Q. Did you make it?
A. I made it from the copy that was sent.
Q. Did you compare it?
A. I compared them both.
Q. Did you compare each item or footing?
A. I compared the footing of the heading.
(Defendant's counsel objects to the papers being received in evidence.)

39 The COURT. I understand the other one is left at the custom-house and always remains there.

Mr. TREMAIN. It remains on record there until produced in court in the proper way; but there is no basis laid here for putting in a copy.

Mr. CLARKE. I object to it on the ground that no foundation has been laid for the offer of copies.

The COURT. The witness has said that he, for the purpose of making out checks, computed on such a paper.

Mr. TREMAIN. Yes, sir.

The COURT. You propose to show by it that these are the papers upon which he computed that.

Mr. TREMAIN. Yes, sir.

The COURT. You can put them in for that purpose.

Mr. CLARKE. I object to it as incompetent and immaterial.

(Objection overruled. Defendant excepts. The papers are marked "Plaintiff's Exhibit A and B," respectively.)

By Mr. TREMAIN:

Q. You say that Exhibit B is the one that you said contained the true invoice?

A. Yes, sir.

Q. Can you tell by looking at the custom-house invoice and entries on which are the invoices that you paid duties, and which Mr. Hair did?

A. I can.

Q. Will you please refresh your recollection by the list of importations in question and by the custom-house papers which are shown you
40 for that purpose, and state whether you paid duties upon those importations? (Showing papers.)

A. Those are mine.

Q. Which one is that?

A. November 7th, the Alvo.

Q. You paid the duties on the Alvo of November 7th?

A. Yes, sir.

Q. Will you please state what was the amount that you paid?

A. I paid $369.70.

Q. Will you please state the items of the calculation according to which that payment was made?

A. The shipment consisted of 3,901 large bunches of bananas at fifty cents, making $1,950.50, and it consisted of 2,328 small bunches at twenty-five cents, making $582 the charges thereon, the estimated charges——

Q. The estimated labor charges you mean?

A. Yes—were $203.64; added to that, in order to make five cents a bunch, was $107.81, making a total of $2,843.95, Columbian money.

Q. For labor charges did you say that was?

A. For labor charges.

Q. Making the total labor charges—

A. $311.45.

Q. Upon that you paid duty?

A. That was reduced to 82.3, making 2,340.57.

Q. What was the amount of duty upon those specific labor charges that you paid; have you made that calculation?

A. I will have to figure it out.

Q. What have you figured on that?

A. I simply got that item as standing as the total labor charges.

41 Q. What are the total inland charges?
A. The total inland charges are 1,266.25.

By Mr. CLARKE:

Q. That is in pesos?
A. No, sir; that is in American gold. The pesos were disposed of at 82.3, making a total, $2,340.57.

By Mr. TREMAIN:

Q. What is the amount of excess of duties which you paid on that importation over and above ten per cent. upon the actual prices of the bananas; that is to say, what is the amount of duty which you paid upon all of these labor charges and charges for inland transportation on that particular importation?
(Defendant's counsel objects to the first part of the question as immaterial.)
Q. I want the amount of duty upon these labor charges?
A. You want them upon inland charges as well, don't you?
A. Yes.
Mr. CLARKE. What is the question?

By Mr. TREMAIN:

Q. What is the amount of the duty that you paid on those labor charges and charges of inland transportation?
A. $152.70.
Q. How did you make that calculation?
A. By reducing 311.45 pesos into American money at 82.3, making $256.30; added thereto the railway charges, $1,266.25, making the sum total of $1,523.55. Figuring out of two and a half per cent. commission, making $281, a total of $1,537.76, which is equal to a duty of $152.70.

42 Q. What is the difference that would state the excess of the difference which you paid on that importation over and above the labor charges on the estimated invoice; that is to say, over and above the figures indicated on the estimated invoice?
A. You want the difference between the total charges on the invoice and the estimated charges?
Q. Yes, sir.
Mr. TREMAIN. I will withdraw that question.
Q. Mr. Clarke wants to know whether that $152.70 that you just testified to was not ten per cent. of all the charges?
A. That is ten per cent. of all the charges, labor charges as well as railway charges.
Q. What would be the actual excess between the duty on the charges as imposed and the duty upon the charges as actually paid?
A. That is, simply with reference to the labor charges?
Q. Yes, sir; simply with reference to the labor charges.
A. A difference of $13.70 in duty. That is simply the difference between labor charges. The other one was the difference between labor charges and inland charges combined.

By Mr. CLARKE:

Q. What is that $13.70?
A. It is the difference between the actual charges and the duty upon

the total charges imposed for labor by the appraiser, not including the transportation.

Mr. TREMAIN. What is the difference on the transportation that you paid on that importation?

A. $127.

Q. Do those two amounts together represent the total excess of claim on that importation?

43 A. I have not figured the excess; I have figured the total amount, not the excess.

Q. Did you cause a classification to be made under your direction based on the estimated invoices, the true invoices, that would show as extracted therefrom the custom-house charge on which duty was actually imposed, the estimated charges as shown in the original estimated invoices, the actual charges as shown by the subsequent invoice, the inland transportation charges as imposed by the collector, with an allowance upon them for two and a half per cent. commission, and interest upon the excess between the duty on the charges proposed and the actual charges to date?

A. I did.

Q. Who was the man that made that?

A. Our book-keeper.

Q. Did you revise the calculations yourself for the purpose of verifying?

A. I did.

Q. (Handing witness a paper.) Is that that calculation?

A. Yes, sir.

The plaintiffs then offered in evidence copies of the various certified consular invoices of the importations in question for the purpose of showing the papers upon which the various checks for the payment of duties were drawn. Counsel for the defendant having duly objected to their introduction as incompetent and immaterial, the court overruled the objection and the defendant then and there duly excepted, and the papers were admitted.

44 Testimony was then offered by the plaintiff tending to prove that the difference between the amount actually paid in duty upon the charges as required by the appraiser and the amount that would have been paid had duty been exacted only upon the actual charges was, with interest, three hundred and five dollars and twenty-three cents. Also that the difference between the amount exacted as duty upon charges and the amount that would have been paid had duty been taken simply upon the estimated charges amounted, with interest, to the sum of one hundred and ninety-nine dollars and ninety-five cents; and that the amount of duties paid upon charges upon inland transportation, was, with interest, two thousand and fifty-nine dollars and seventy-nine cents.

SEMOUR HAIT, a witness on the part of the plaintiff, then testified that an entry of the importation by the Ailsa, Feb. 23, 1882, was made by him as attorney for the plaintiff, and that such entry when presented to the collector contained all the following items:

"Merchandise imported by Frank Brothers Company in the steamship Alsa, whereof Seymour is master, from Aspinwall to New York, Feb. 23, 1882. Marks, F. B."

45 "Two bins of bananas containing 4,132 large bunches, at sixty cents," "pesos, 2,479.20," "3,463 small bunches at thirty cents," "1,038.90 pesos."

"Charges, two hundred and thirty-nine pesos."

"Shipping charges added as required by the appraiser to make five cents Columbian currency per bunch, 140.38 pesos."

"Transportation charges added as required by appraiser on 4,132 large bunches at 25 cents, $1,033, and 3,463 small bunches at 12½ cents, $432.87."

Accompanying the above entry the following invoice was presented:

"Invoice of merchandise shipped by the Frank Bros. Co. on board the Alsa, Sansome master, bound for New York, and consigned to Frank Bros. Co.; Colon, Feb. 11, 1882, 2 bins containing—

"4,202 bunches bananas at 60	2,521.20	pesos.
"3,564 bunches bananas at 30	1,069.20	"
"Charges for labor	239.37	"
"Consul fee	3.	"
	3,832.77	"
"The Frank Bros. Company:		
"4,132 large bunches at 60	3,479.20	"
"3,463 small bunches at 30	1,038.90	"
Charges	239.37	"
"Shipping charges added as required by the appraiser to make 5 cents Columbian currency per bunch	140.38	"
	3,897.85	"
46 "Reduced to U. S. currency	$3,207.93	
"Transportation charges added as required by "the appraiser on 4,132 large bunches at 25 cents	1,033.	
"3,463 small bunches at 12½ cents	432.87	
	4,673.80	
"Commission 2½ per cent	116.84	
	4,790.64"	

The appraiser's return endorsed thereon was as follows: "Value correct, with importer's additions."

It was then admitted by counsel for the respective parties that the entries and invoices of all the various importations contained in plaintiff's bill of particulars, when presented to the collector, contained items similar, differing only in figures, to those which appeared upon the entry and invoice of the Alsa, and that the appraiser's return upon every invoice was the same, and that in case of each importation the collector liquidated the duties upon the invoice value, plus the added charges.

47 C. B. FRANK recalled.

By Mr. TREMAIN:

Q. You received accounts current did you not in regular course of business of every importation made to your firm from Aspinwall?

A. I did.

Q. And those accounts current in the usual course of business always indicated, did they not, the exact amount of charges actually paid at the port of Aspinwall for labor?

A. They did as far as the charges formed part of the actual invoice.

(The answer is objected to by Mr. Clarke.)

Q. Was Mr. Rathman and your brother in charge of the work at Aspinwall—the business at that end?

A. I don't know whether they were there together, but either one or the other was in charge.

Q. Will you please state why you caused these additions to be put at the bottom of the invoice, and whether you were required so to do by the appraising officer; if so, at what figures they required them?

(Objected to as immaterial. Objection overruled. Defendant excepts.)

The COURT. I think it must be admissible on the issue that they claim to show that when they presented this paper something more was required to be done.

Mr. CLARKE. I except.

Answer. Because we had a number of entries prior to this litigation here going on; we thought that we would test our original mode of
48 entry, but the consequence was that such a heavy amount of damages, or rather heavy amount of penalty, was added on the invoice that it would have ruined us in less than no time. We were therefore compelled to make these additions under protest.

Q. In order to get your invoices passed?

A. Yes, sir.

By Mr. CLARKE:

Q. In order to get them passed without the addition?

A. The addition once made on the invoice stays there and we cannot get it back except under protest and proceeding.

By Mr. TREMAIN:

Q. So you caused protest and appeal to be made on each of these importations?

A. I did, sir.

Mr. TREMAIN. I read the protest and appeals:

The protests all being alike, the following one was read:

NEW YORK, *Jan'y 6th*, 1882.

To the COLLECTOR OF CUSTOMS:

SIR: We hereby protest against being compelled to add to our entries and pay duty upon the charges for inland freight and labor, above those specified in our invoices; and penalties on our importations per Strs. Colon, Oct. 18; Alene, Oct. 21; Cof. Para, Oct. 27, '81; Ailsa, Oct. 8 (2); Alvo, Nov. 7; Ailsa, Nov. 21; Colon, Nov. 26; Acapulco and Alene, Dec. 3, '81, claiming that—

49 1. Such charges are in excess of those actually incurred, and therefore no such duty nor penalty should be charged.

2. That additions are made to our entries by the appraisers arbitrarily, without system and upon no proper or lawful basis.

We pay the duties and penalties so exacted in order to get our goods, claiming a refund of the same.

THE FRANK BROS. CO.,
Per W. B. COUGHTRY, *Att'y.*

Q. Appeal was likewise made to the Secretary of the Treasury and decided thereupon——

(Objected to.)

Mr. CLARKE. I am advised by the expert clerk of the bureau of protest and appeals that there is no question in regard to the protest and appeals.

Mr. TREMAIN. In respect to some of the appeals there is the decision of the Secretary of the Treasury, dated August 8, 1882. In respect to the balance there is no decision so far as we are advised.

The suit was instituted on the 6th of November, 1882.

50 Cross-examined by Mr. CLARKE:

Q. You say you were required by the appraiser to make some additions to your entry?

A. Yes, sir.

Q. Who do you mean by the appraiser?

A. The only one I have knowledge of is Mr. Carner, who is present in court.

Q. He is the gentleman who examines this class of goods?

A. Yes, sir.

Q. At the appraiser's office?

A. Yes, sir.

Q. You say that he required you to make these additions to your entries?

A. He did. If I did not make them he would add an additional penalty.

Q. When did he require you to do that in that way?

A. That was a considerable time prior to this.

Q. Prior to these importations?

A. Yes, sir.

Q. How long should you say?

A. I should judge about three or four months.

Q. Three or four months before the first of these importations?

A. Yes, sir.

Q. Did he tell you if you did not make these additions that he would add them for you and it would carry a penalty?

A. Yes, sir; he did so repeatedly.

Q. And on those importations in which you have not made the additions he made them and the penalty was added?

A. Yes, sir.

Q. Of how much?

A. A considerable amount.

Q. Double the amount?

51 A. Double or thribble; I forgot what the calculation was.

By Mr. TREMAIN:

Q. And at the rate of 20 per cent., was it not?

A. 20 per cent. ad valorem, I believe.

By Mr. CLARKE:

Q. Are you sure of that?

A. I am quite sure of it.

Q. Can you tell me what importation it was when you say he made this addition; what was the date of it?

A. There certainly were about 20 importations in question where he did make the addition and penalty for me.

Q. Can you name any of them?

A. Not from memory.

Q. Did he make the additions for the charges or for the value?

A. For charges; there was no question of value.

Q. Can you tell me when it was that he made this remark, that if you did not add them he would, and it would carry a penalty?

A. That was prior to the invoices.

Q. Can you tell me in respect to what importation, or in connection with what importation, that was?

A. I could not tell you now without refreshing my memory.

Q. Can you refresh your memory by any material in court?

A. There is nothing in court here that I can refresh my memory from.

By Mr. TREMAIN:

Q. You could from your books at home?

A. I could; yes, sir; from my books.

By Mr. CLARKE:

Q. Whereabouts was it that he told you that?

52 A. He came to see me at the office; he met me on the street and on the docks where we discharge the steamers, and at various places.

Q. And said this to you every time he saw you?

A. Almost every time.

Q. I wish you would give the conversation, as well as you can.

A. I cannot.

Q. Give the substance of it.

A. The substance is what I have testified to.

Q. That is as far as you can testify about it?

A. Yes, sir; that is as far as I can testify.

Q. Do you know what Mr. Garner's position was at the appraiser's stores?

A. He was an appraiser, I believe, in the fifth or sixth division.

Q. He was not the appraiser of the port?

A. I don't know that he was.

Q. Was he one of the assistant appraisers?

A. I believe he was. He was the appraiser I had my business dealings with.

Q. That is what you mean by saying that you were required to make the addition on these invoices and entries required by the statement that the appraiser considered that those items ought to be paid, and if you did not add them he would add them, and that would carry a penalty?

A. Not alone that, but I knew from my own experience. The entries made prior to this, the additions and penalties were so heavy I felt required to do so.

53 Q. The statement and the fact, that in cases of early importations the additions were made and penalties added is what you mean by saying that you were required in respect to these importations to made these additions in your entries?

A. I knew from the appraiser's, by conversation, that, unless I made the additions, *that* he would make them for me, and add, in addition, a penalty.

Q. That is, from what had taken place in other cases?

A. Yes, sir.

Q. But you did not know it in regard to this particular importation; he did not make reference to any one of these particular importations; at the time he made this remark you did not see him, did you?

A. I saw him right along that time. I cannot point out any on the entry. I was constantly having this information, and I desired to make it conform with his ideas on the subject.

Q. When you present the invoice and entry at the custom-house, you do not come officially in contact with anybody in the appraiser's office?

A. No, sir.

Q. You only come in contact with people in the collector's office?

A. That is all.

Q. At the time the invoice and entry was presented to the collector, was anything said by anybody there with reference to making additions?

A. No.

Q. That is true in regard to all of them?

A. They had no knowledge of the case.

54 Q. You have no reason to suppose that they would not have received your entry if it had not contained these charges?

A. I don't suppose they would.

Q. In fact, they had received several other entries which did not contain these additions?

A. Yes, sir; very much to my sorrow.

By Mr. TREMAIN:

Q. With what result?

A. With a very bad result. I wish they would have objected, and I would have made the corrections and have saved a great amount of money.

Q. You had to make them in this way in order to get your permit and have your invoices passed, or else be subjected to the penalty that you stated resulted in such a sad experience?

A. I think that is so.

By Mr. CLARKE:

Q. You say that you get your permit just the same whether these additions were made on the invoices or not; that is, that had been your custom?

A. Yes, sir.

Q. When they were not made with these additions?

A. Yes, sir; but there was a very great delay in liquidating, and consequently I intended to test these two; before the liquidation was

made there was about five or six entries had rolled up, on which I was subjected to an additional penalty. I found myself so heavily handicapped, I considered it was safer and better to come up to the conditions of the appraiser and protest and appeal.

55 By Mr. TREMAIN:

Q. You found there was no practical way by which you could test the right of authority to put those additions on and conduct your business at the same time?

A. No, sir; it takes three or four weeks to get an entry liquidated.

By Mr. CLARKE:

Q. You had your goods before the liquidation?

A. Yes, sir.

Q. Merely a question of finding out what was due on them after that?

A. Yes, sir; that is all.

The foregoing is in substance all the evidence put in by the plaintiff before resting their case.

The plaintiff thereupon rested, and the counsel for the defendant then moved the court to direct a verdict for the defendant, on the ground that no cause of action had been shown, the plaintiff having been bound by the invoices and entries which they had submitted to the collector, who was bound to exact duty upon the value of the goods and the charges which were submitted to him by the importer, and counsel for the defendant furthermore requested the court to specially direct a verdict for the defendant as to plaintiff's claim upon transportation charges, upon the ground that there was no evidence in the case that the amount so added was excessive; and the court having declined so to direct, the counsel for the defendant then and there duly excepted to the refusal of the court to direct a verdict generally, and furthermore specifically excepted to the
56 refusal of the court to direct a verdict as to the transportation charges.

ALONZO E. GARNER, being introduced as a witness on the part of the defendant, testified that he was an examiner at the public stores, and belonged to the 10th division, in charge of Assistant Appraiser Sturges; that he had examined the importations of goods embraced in plaintiffs' bill of particulars; that he may have told Mr. Frank that unless he made certain additions to his charges it would be necessary for witness to make them; but he did not state that such additions would necessarily carry a penalty, because he had no knowledge as to the fact; that to learn that required certain calculations, which was the work of the liquidating department; that he had taken Aspinwall as the place at which the value of the goods was to be estimated.

DAVID C. STURGES, a witness on behalf of the defendant, then testified that he was assistant appraiser, in charge of the division through which plaintiffs' importations had been passed; that on one occasion a conversation had occurred between himself and the president of the plaintiffs' company; that he had called the latter's attention to the transportation charges upon the fruit from the interior provinces to Aspinwall,
57 which was merely the port of shipment and not the market, and assured him that such charges were dutiable under the statute; the

witness further stated that in the appraisement of the goods embraced in plaintiffs' bill of particulars no particular place was taken as the principal market of the country, as it was understood that the goods were purchased at a number of different places in the interior, but that Aspinwall was not considered by the appraiser in making the appraisement to be such market, it being only a port of shipment.

HENRY E. WESSELS, being duly sworn and examined as a witness for the defendant, testifies:

By Mr. CLARKE:

Q. What is your business?
A. Importing and exporting merchants.
Q. Did you import bananas in 1881 and 1882?
A. We did; the firm of which I am a member.
Q. What is your firm?
A. G. Wessels & Co.
Q. You import them from the United States of Columbia?
A. Yes, sir.
Q. Did you make extensive importations during that time?
A. About to the extent of thirty or forty thousand bundles; it was during several months of that year.
Q. What year?
A. 1881.

By Mr. TREMAIN:

Q. How many cargoes?
58 A. I think four; there may be five; I am not prepared to say the exact amount.

By Mr. CLARKE:

Q. Do you know what is the principal market for bananas in the United States of Columbia, or what was during that time?
A. I would hardly know exactly how to define that word "market." The only point of exportation was Aspinwall.

By Mr. TREMAIN:

Q. Allow me to ask the witness whether he is testifying from his personal experience?
A. I have been in Aspinwall.
Q. Have you bought bananas at Aspinwall?
A. I never have personally; our firm has.

By Mr. CLARKE:

Q. At Aspinwall?
A. In the interior. Personally I never bought any.
Q. Assuming the chief market of the country to be the place where they chiefly hold the sales, and where sales at wholesale usually take place, is Aspinwall the chief market in the United States of Columbia?
(Objected to as leading and assuming a conclusion of law, also as to form.)
Q. Assuming the definition of "chief market" to be the place where

bananas are chiefly and usually held for sale at wholesale in a foreign country, what was the chief market of the United States of Columbia in 1881?

(Same objection as last above.)

Q. What were the principal markets of the United States of Columbia in 1881?

A. To my knowledge, points or settlements along the line of the
59 Panama Railroad.

Q. Was it Aspinwall?

A. It was not.

Q. Do you know what it cost per bunch for shipping in 1881, the shipping charges per bunch of bananas in Aspinwall; what it was?

(Objected to as immaterial and irrelevant.)

The COURT. You may ask him the question without my deciding what the effect of it may be.

(Plaintiff excepts.)

By Mr. CLARKE:

Q. In 1881 what were the shipping charges per bunch for putting bananas into a ship at Aspinwall?

(Objected to on the ground that the witness has not been shown to be an expert in the price or value of such charges in Aspinwall, and the plaintiffs' counsel asks permission to cross-examine the witness preliminarily for the purpose of sustaining the objection.

Objection overruled; permission to cross-examine the witness at this stage of the case denied.

Mr. Tremain excepts.)

Q. In shipping bananas after they had arrived at Aspinwall, what various items of expense would there be? I mean the amount, as, for illustration, transporting them to the ship and putting them on the ship.
60 What different items of expense of that sort there were in getting them on the vessel?

(Objected to on the ground that the question must be directed either to the experience of the witness's own firm, or else to his knowledge of the general course of business.

Objection overruled. Exception.)

Answer. Do I understand you to say that the goods had arrived at Aspinwall?

Q. Yes.

A. I cannot give you the labor after they arrived at Aspinwall. I can give you merely the total labor that the goods are subjected to from the time that they are placed alongside the railroad track until aboard the ship.

Q. Labor charges?

A. Only from my own experience. I do not speak for others. Five cents a bunch are the charges that we were subjected to.

Q. Is that separate from the transportation charges?

A. Yes, sir.

Q. Five cents a bunch ~~colonial~~ Columbian currency?

A. Columbian currency. Five cents a bunch paid all our labor, interior and shipping.

Q. Did it require as much as five cents to do it?

A. It cost us that; we would not have paid any more than we were obliged to.

61 Cross-examined by Mr. TREMAIN:

Q. The total number of shipments that you had during the years 1881 and 1882 were four or five cargoes?

A. 1881 only four or five; I am not prepared to say which.

Q. You do not mean to testify that that is the general course of business in the market at Aspinwall and that that was the general price that everybody paid, do you?

A. I can only state that that is what we were obliged to pay.

Q. Did you have to lighter your goods?

A. Yes, sir; in some instances.

Q. That is an element that increased the expense?

A. Yes, sir.

Q. The steamer did not come alongside the wharf?

A. She did in certain instances.

Q. You had a steamer of your own?

A. Yes, sir.

Q. If it had not been a steamer of your own would not the steamer bear part of the expense?

A. Undoubtedly the steamer would have to pay to take them in.

Q. That would have lessened it?

A. It would have lessened it, I suppose; yes, sir. The fruit and vessel were our own.

Q. The principal place in that section of the country is Aspinwall, is it not?

A. Yes, sir; that is the only port of export of any kind.

62 Q. It is the only town, is it not?

A. On that side of the isthmus; yes, sir.

Q. These little settlements that you speak of along the road, are they about the size of Albany and Utica and other little towns along the Central road?

A. No, sir; Aspinwall itself would not be as large as they are.

Q. How large is one of these little settlements that you think might be a market? How many people live there.

A. Four or five hundred; some cases less.

Q. Some cases there would not be a house at all?

A. Some instances away from the railroad stations, scattered along the line of the railroad.

Q. Any banks there?

A. No, sir.

Q. No exchange or mercantile bodies there?

A. None whatever.

Q. No office of any kind except the railroad?

A. The railroad, that is all.

Q. At Aspinwall there is quite a little settlement, isn't there?

A. Yes, sir.

Q. There are banks and offices there, are there not?

A. Yes, sir.

Q. Merchants settle their accounts there and conduct their transactions there?

A. Merchants engaged in business there.

63 Q. All merchants having business in the United States of Columbia generally turn up at Aspinwall, first or last?

A. Yes, sir.

Q. All transactions are consum'ated there?

A. Yes, sir.

Q. Payments made there?

A. Yes, sir. I speak from my own experience.

Q. As far as your knowledge goes?

A. Yes, sir.

Q. That is the only place of commercial importance?

A. On that side of the Isthmus; yes, sir.

Q. For bananas, or any other sort of indigestible fruit?

A. Yes, sir.

By Mr. CLARKE:

Q. Are bananas bought and sold there at Aspinwall by the wholesale?

A. To my knowledge I never saw any sold there.

Q. Buy them from planters up the road?

A. We were obliged to buy them along the line of the railroad.

Q. Do you know of any wholesale dealers of bananas in Aspinwall?

A. No, sir; except the Frank Bros. concern. They are in Aspinwall. That is the only one. There is one other party there, but he is a small man.

By Mr. TREMAIN:

Q. They are large dealers, are they not—the Frank Bros.?

A. Yes, sir.

Q. And they are the principal dealers there?

A. Yes, sir.

64 Q. The other parties. How many do you say; one or two others?

A. One or two others.

Q. How large a business do the others do compared with Frank Bros.?

A. They are doing none there at present; at that time they did a small business.

By Mr. CLARKE:

Q. Did Frank Bro's sell at wholesale at Aspinwall?

A. No, sir.

Q. They exported?

A. Expotted. They handled only their own fruit.

GEORGE H. RICHARDSON, being duly sworn and examined as a witness for the defendant, testifies:

By Mr. CLARKE:

Q. What is your business?

A. Fruit trade; banana trade.

Q. Importer?

A. Yes, sir.

Q. You were an importer in 1881 and 1882?

A. Yes, sir.

Q. Did you import bananas from the United States of Columbia?
A. Yes, sir.
Q. From Aspinwall?
A. Yes, sir.
Q. During the years 1881 and 1882 what was the principal market for bananas in the United States of Columbia?
A. I suppose the principal market would by the buying point on the line of the Panama Railroad.
Q. Was Aspinwall that market?
65 A. No, sir; I think not.
Q. During 1881 and 1882, what was the average cost per bunch of shipping bananas, or labor charges, excluding the transportation charges?

(Objected to on the ground that it does not appear that the witness had any personal knowledge on the subject.)

By Mr. TREMAIN:

Q. Have you ever been there and conducted banana transactions—wholesale transactions?
A. I have been there, but I have not conducted the business.
Q. You have not bought any cargoes of bananas, or quantities of bananas by the wholesale yourself in the United States of Columbia?
A. Except through an agent.
Q. And the knowledge you have derived respecting the method of conducting the business down there is derived by reason of your correspondents principally--you have no personal knowledge as to the ordinary course of business of the principal markets of the country down there except as you derived it this way?
A. This way and from observation.
Q. Were you there for business purposes?
A. I was not.
Q. You were just passing through the Isthmus.
A. Yes, sir.

(Plaintiffs object to the last above question asked by Mr. Clarke.)

66 By Mr. CLARKE:

Q. You have your agent down there and you get reports and accounts of expenses for this item among others?
A. I do.
Q. And did during the series of months and years in that way?
A. Yes, sir.
Q. That is the way you got your knowledge of what the labor charges are?
A. Yes, sir.
Q. Do you know what they have to pay?
A. Yes; what I have to pay.

By Mr. TREMAIN:

Q. You don't know what your agent actually does pay?
A. I do not. I know what we actually pay him.

The COURT. The witness may answer the question in view of the additional statement, what it cost him.

(Plaintiffs except.)

Answer. It actually costs us about five cents.

By Mr. CLARKE:

Q. During the years 1881 and 1882?

A. Yes, sir.

Q. That is for labor charges, excluding the railroad?

A. Yes, sir.

Cross-examination by Mr. TREMAIN:

Q. Did you have your steamer at that time?

A. We had two or three steamers go there on account of the firm, and outside of that we shipped by another company.

Q. How many importations did you have in 1881?

67 A. Well, I should judge what steamers we had for our own on account of the fruit firm might have been three or four ships; the others might have been a dozen.

Q. How many cargoes did you import?

A. I couldn't tell you exactly.

Q. Did you import any in 1882?

A. We did.

Q. How many?

A. I couldn't tell you how many.

Q. Do you think five cents a bunch covered all the labor as far as it was reported to you?

A. Outside of our agent's commission.

Q. Did you have to lighter your goods?

A. No, sir; not that I know of.

Q. When you put them on your steamer it cost you more than if the steamer bore part of the expense?

A. I think not. I think we landed them on board the steamer in every case.

Q. Whether it was your own steamer or somebody else's?

A. Yes, sir.

Q. During the year 1881, and the latter part of 1881, and the early part of 1882, have you had half as many cargoes of bananas shipped from Aspinwall that Frank Bros. did?

A. I think not.

Q, Did you have a quarter as many?

A. I think we did?

Q. And some people got their labor done cheaper than others?

A. Very likely.

Q. The price of labor down there is not absolutely uniform, is it?

A. I don't know.

68 Q. Don't you know whether it depends on the adaptability of the men who are superintendents of labor and whether they are employing laborers constantly?

A. It does.

Q. That would be a circumstance to enable such persons to employ cheaper?

A. I should suppose so.

Q. Under those circumstances three or four cents a bunch would not be a' inordinately low charge for the services rendered?

A. I should think 25 % would be a little different.

Q. You have no personal knowledge, however, as to what was the amount paid by your own people or the other people?

A. No, sir, not at all.

Q. How many vessels did you have yourself?

A. I think we had but one—the one that went to Aspinwall.

Q. Have you any personal knowledge that your firm paid in fact all the labor charges attendant upon getting those bananas?

A. In either case?

Q. Yes.

A. I think we did.

Q. You have no personal knowledge?

A. No, sir.

Q. For aught you know they may have been more?

A. Yes, sir.

Q. For aught you know it may have been less?

A. I don't think they were less.

Q. For aught you know the agent may have paid less?

69 A. I don't know; but he may have paid less. I know what we paid him.

Q. Do you feel sure that the charges are about the same whether the steamer helps you to put them aboard the ship or not?

A. I think about the same.

Q. You have no personal knowledge on that subject, have you?

A. Only from memory.

Q. And you never superintended it?

A. No; I have not.

Q. Five cents a bunch for large ones is a proper and fair price?

A. I couldn't tell you what a fair price is.

Q. What?

A. I couldn't judge what a fair price is.

C. B. FRANK recalled and examined:

By Mr. CLARKE, counsel for defendant:

Q. Some time prior to the importations involved in this suit you had a reappraisement of the bananas at the appraiser's stores, didn't you?

(Objected to as immaterial and irrelevant, and as enquiring about importation not at issue in this case. Objection overruled. Exception.)

Mr. TREMAIN. I ask your honor to fix the matter of time to the question so as to have it reasonably certain.

The COURT. He is getting at that.

Answer. I had.

70 Q. You offered yourself as a witness on the reappraisement?

A. I did.

Q. Were you asked as to the cost of putting the bananas on ships.

(Objected to until the time and place is specified.)

Q. When was it?

A. I couldn't tell you.

Q. How long before these importations?
A. I should think about a year or two years.
Q. So long as that?
A. Yes.
Q. Were you examined on reappraisement proceedings after the 1st of January, 1880?
A. I couldn't tell you.
Q. You cannot fix the date?
A. No.
Q. Can you say that you were not?
A. I could not tell you that either.
Q. You couldn't say that?
A. No, sir.
Q. I ask you whether at the reappraisement proceedings that you had in regard to bananas which you had imported you were asked as to the cost of putting the bananas on board the ship. I do not ask what the question or answer was, but whether that subject was broached?
(Objected to as immaterial, irrelevant, and incompetent, the time not being shown. Objection overruled. Exception.)
Answer. I have no recollection of being asked that question. The question at issue was the question of value.
71 Q. Can you say whether you were or not?
A. I couldn't tell you.
Q. You cannot state and don't recollect?
A. I don't recollect.
Q. Do you remember the reappraisement before Louis Hyle, a general appraiser and a merchant appraiser?
A. I do.
Q. And the merchant appraiser was who?
A. I think Mr. Edward Tilton.
Q. On the reappraisement before those gentlemen which was not ascertained the 1st of January, 1880, were you asked this question: "We want to know what it cost you to have these things put on board ship at Aspinwall," and did you answer, "I can tell you pretty nearly. It cost us, as near as I can say, about five or six cents on an average."
A. I have no recollection of it whatever.
Q. You do not remember?
A. No, sir.
Q. Is it the fact that it did cost you five or six cents to get them on board?
(Objected to.)
Q. Did it cost you that to get bananas on board ship at Aspinwall?
(Objected to.)
Q. Was there any change between the 1st of January, 1880, and the time that these importations took place in the cost per bunch of putting them on board ship at Aspinwall?
72 (Objected to as immaterial and irrelevant, the question being what is the fact now. Also objected to as not relating to labor charges and no time being stated.)
The COURT. The question cannot be narrowed to just exactly that as he made it a little wider himself. He testified as to what it cost before this.

By Mr. CLARKE:

Q. Make your enquiry a little more specific.

Q. So far as the cost of labor putting the bananas on board ship at Aspinwall is concerned, was there any change in the average cost per bunch between the first of January, 1880, and the time of these importations?

(Objected to on the ground previously stated. Objection overruled. Exception.)

Answer. I do not think there was any difference.

Q. During that time?

A. No, sir.

Q. (Handing paper.) I show you invoice by the City of Para, October 27th, 1881. Can you tell me from whom you bought the bananas on that invoice?

(Objected to as immaterial, irrelevant, and incompetent. Objection overruled. Exception.)

Answer. I bought them from about the country, different people more or less; I couldn't tell you how many.

73 Q. Planters?

A. Planters.

Q. Planters along the line of the railroad?

A. Along the line of the road, and across the bay and at distant ports.

Q. You cannot tell us to the specific invoice where you got them?

A. No, sir.

Q. In this case?

A. In no other case can I tell you.

Q. In none of these cases?

A. No, sir.

Q. I understand you bought them from a number of people and had them sent to Aspinwall, and then made up your invoice and shipped them from Aspinwall to New York?

A. We bought them of different people. Some of them was sent down to Aspinwall by cars and others by boats, and others brought by horseback.

Q. And then you made up your invoices?

A. We did.

Q. And sent them on to New York?

A. Yes, sir.

Q. And that is so of all these importations?

A. That is the case with all of them.

By a JUROR:

Q. What is the price at which the bananas were invoiced in this invoice?

A. That is fifty cents a large bunch and twenty-five cents a small bunch.

Q. Does that fifty cents include delivery free to you of the bananas at Aspinwall?

A. In some cases it does and in some cases it don't.

74 Q. When in a case where it does not, did your actual charges includes the expenses of transportation?

A. They did not.

By Mr. CLARKE:

Q. That is, your invoice states, as I understand, the price you pay the seller?

A. Yes, sir.

Q. And in case of those that came by railroad or were delivered along the siding of the road?

A. Perhaps a dozen different places.

Q. Along the different sidings?

A. Yes, sir.

Q. And the one, I suppose, nearest or most convenient to his plantation?

A. Yes, sir.

Q. Most convenient to his plantation?

A. Yes, sir.

Q. And the charges which have been called the actual charges for labor in this case don't include the cost of transportation from the place where he delivered to Aspinwall?

A. They did not.

By a JUROR:

Q. Where does that transportation appear in the invoice; is it at the cost at which bananas are invoiced, or is it in the matter of charges?

Mr. TREMAIN. The invoices show that, sir. [Handing invoice.] Look at the invoice.

Mr. CLARKE. It don't appear anywhere. Ask the witness.

By a JUROR:

Q. Irrespective of the charge whether it appears or does not
75 appear, what is the fact; where does the expense of transportation come in; is it in the charges, or is it in the price?

A. In the ordinary invoice it does not appear at all.

Q. I mean the invoice on which you pay duty?

A. It is added as required by the appraiser at the bottom of the invoice.

By Mr. TREMAIN:

Q. You have specified the labor charges in addition to the price on each invoice and estimated labor charges?

A. We have.

Q. The same as indicated in that invoice?

A. Yes.

By a JUROR:

Q. Then you don't *in* question that charge by the appraiser for that service?

A. Yes, sir.

Q. That is to say there is a portion of the expense of bringing these bananas from the railroad point at which they were taken up, on which you don't pay duty?

A. No, sir; rather we pay it under stress.

Q. And then there is a part of the transportation expense on which you do pay duty?

A. There is none, then, on which I pay duty on the part of those ba-

nanas. There is no expense of transportation. The planters themselves bring them to the wharf, and the subsequent charges are added.

By Mr. TREMAIN:

Your transactions were in Aspinwall?

A. Exactly.

Q. And your bill of lading ran from Aspinwall?

A. Yes, sir.

76 By a JUROR:

Q. You bought them at Aspinwall to be delivered at a certain price?

A. We bought them at the same price, whether they were delivered by the railroad or not. We paid for them at Aspinwall; paid the same figure as at a distant point.

By Mr. TREMAIN:

Q. All your deliveries are at Aspinwall?

A. Yes, sir.

Q. And your price is fixed according to Aspinwall prices?

A. Yes, sir.

Q. That is the fact?

A. Yes, sir.

Q. And that is the way the business has always been conducted by you?

A. Yes, sir.

Q. But when bananas come by horseback—and don't bananas come from Parobella?

A. Yes, sir.

Q. And other places along the coast?

A. Yes, sir; on the other side of the bay, brought over by canoes.

Q. And the price in Aspinwall is the uniform price?

A. Yes, sir; that is so for that steamer; it varies at different seasons.

Q. Your house probably buys more than half the bananas that are exported from Aspinwall, does it not?

A. Considerably more than half.

By a JUROR:

Q. Do I understand that this 50 cents is a kind of conventional price?

A. I don't know what you mean by "conventional price."

Q. That is to say, that you charged that because your neighbors do, or invoiced them at that?

77 A. That is the price we actually paid for them.

Q. Do you pay fifty cents per bunch? I speak about the bananas that you shipped, in any of these invoices, for instance. You invoiced them at fifty cents. You say the labor charges compare with the charges on the wharf; does not fifty cents therefore include the transportation from the point where they were taken from to Aspinwall?

A. No, sir; it does not.

Q. Do you or the seller pay that?

A. We pay that; in some cases it was included in the bill of lading to New York.

By Mr. TREMAIN:

Q. Send special trains out sometimes for them?

A. Yes, sir; at all times.

By a JUROR:

Q. Do you charge the expense of these trains?

A. We were put to that.

Q. Do you add that in any form?

A. No, sir.

Q. Why not?

A. Because we considered the freight charge was simply from the place of production to, I think, Aspinwall, the principal market, and our prices were fixed at Aspinwall. We paid the same for bananas either at Aspinwall, without any expense for transportation, and we were not called upon to pay duty on inland charges.

By Mr. TREMAIN:

Q. The operation was the same, whether at Aspinwall or anywhere else?

A. Yes, sir.

By a JUROR:

Q. If you bought the bananas at Aspinwall, wouldn't you have had to pay more for them than if you had bought them in the interior but
78 on the railroad?

A. In no case whatever.

By Mr. CLARKE:

Q. It would cost more?

A. It never cost us more.

Q. Cost you fifty cents a bunch placed on the railroad——

A. That is not the question the gentleman asked me.

By a JUROR:

Q. If you pay 20 cents a bunch 25 miles away from Aspinwall, it would cost you more than fifty cents a bunch delivered at Aspinwall?

A. If I should wish to figure it so.

Q. Wasn't it a fact?

A. In some cases it did not; in some cases the railway charges were added to our bill of lading to New York. A through bill of lading was at so much per ton.

Q. In those cases where it did cost you more, where does the extra expense appear in the invoice?

A. It does not appear in any invoice.

Q. That is to say, in some invoices you pay for transportation charges and some you do not?

A. Exactly.

By Mr. TREMAIN:

Q. And the way you paid for them in all instances were that you had a through bill of lading from Aspinwall to New York?

A. Yes, sir.

Q. You had a through bill of lading from Aspinwall to New York?

A. Yes, sir; in all instances.

Q. In instances that any expense for transportation occurred all
79 you paid was represented by the bill of lading, was it not?

(Objected to as immaterial. Objection overruled. Exception.)

Answer. In the case of the Pacific Mail steamers.

Q. You were charged a specific amount per ton delivered in New York, no matter where bananas came from?

A. In the case of the Atlas line we were charged so much for transportation from Aspinwall and so much transportation inland.

Q. No matter where they came from?

A. No matter.

Q. You paid the same freight, all considered, from Aspinwall in both cases?

A. Aggregated, yes, sir.

Q. As a matter of fact it would be perfectly impossible, would it not——

(Question withdrawn.)

By Mr. CLARKE:

Q. You stated that there was some of the bananas represented by these invoices upon which you paid to the planters and raisers of them the invoice price, fifty cents a bunch for large, or whatever it was in a particular case, and twenty-five cents, and that there were no additions to that, and cost of transportation to Aspinwall, which was the cost that you paid and not the seller of it?

A. Yes, sir.

Q. And you have not testified, have you, in any way which cases those were in respect to these importations?

A. In what way?

80 Q. Have you pointed out the cases in which you did pay something for transportation in addition to the price and those cases where you say you did not pay anything for transportation in addition to the price?

A. They are distinguished in our bill of particulars inasmuch as we paid on fruit that came to New York in shipments by the Pacific Mail steamers, and we did not in shipment by the Atlas steamers.

Q. I am referring now to the terms on which you purchased them from the seller in cases where the seller delivered them to you for fifty cents was the invoice price, whatever it was in a given case at Aspinwall, then yon have no expense for transportation in respect to those, had you?

A. In respect to what?

Q. In respect to bananas that you bought in those cases.

A. If you tell the line by which they were shipped I can give you an answer.

Q. I will put it in this way. In all the cases where the sellers, for the price that you paid the sellers the planters, where the price that you gave them, did not require them to deliver to you free at Aspinwall, there was something that you paid on account of transportation to get them there, was there?

(Objected to.)

Q. As I stated before, on shipments by the Pacific Mail. Answer that question.

A. I will try to answer it. The bills of lading are attached to our invoices, and they show a charge of so much per ton from Aspinwall
81 up. That included all inland charges. In the case of the Atlas line the bill of lading shows simply the transportation from Aspinwall to New York, and the bill was rendered separate by the Panama Railroad and paid in New York for inland transportation.

By the COURT:

Q. Is there some connection between the Panama Railroad and the Pacific Mail?

A. That is more than I can tell you.

By Mr. TREMAIN:

Q. There was some connection between the railroad and the steamers?

A. Not, inasmuch as the line that goods were transported in from Panama.

By Mr. CLARKE:

Q. Prices that you paid the steamship company was the price that you paid the railroad company?

A. That is more than I can tell you.

By the COURT:

Q. Is that the fact that shipping charges included them?

A. Yes, sir.

Q. In the Pacific Mail?

A. The Pacific Mail charges, they were included in the bill of lading.

By Mr. CLARKE:

Q. I say that in all cases where the price that you paid the planter did not include either by him at Aspinwall, you in some way, directly or indirectly, paid for the transportation in addition to that price to Aspinwall, did you not?

A. I paid the through rate to Aspinwall——

Q. Is that so or not?

A. I am not connected with the steamship line or the Panama Railroad.

Q. In some way or other you paid for it yourself, did you not?

A. No.

Q. If any one paid for it you were the person?

82 A. If you want to draw that inference you may do so.

Q. You have not pointed out in any way, and you cannot, as I understand you, point out in any way the cases where the price that you paid the seller the planter included delivery for him at Aspinwall.

A. There was no occasion for me to point it out.

Q. I do not ask you to reason about it. I ask you what the fact is, whether you have pointed out or can point out in any way the cases on these invoices which were delivered by the planter free of cost to you at Aspinwall?

A. There were cases of that kind mixed up in every invoice and every importation.

Q. Then you cannot?

A. I cannot tell you what consists, or rather what portion of its con-

sists of bananas delivered at Aspinwall, or what portion of those were brought to the railroad.

Q. Can you name every plantation of which you purchased bananas mentioned in the invoice?

A. Yes.

Q. What were they?

A. There is a place called Fox River.

Q. Where is that?

A. Two miles from Aspinwall.

Q. Two miles on the Panama Railroad?

A. Yes, sir.

Q. What is another place?

A. Monkey Hill.

Q. Where is that?

A. About four miles on the Panama Railroad.

Q. Where is another?

A. There is one called Mendee.

Q. Where is that?

A. That is six miles.

83 Q. Where is there another?

A. Gatoom.

Q. Where is that?

A. About eight miles. And Lyon Hill is another, about nine and a half miles, and I believe the last one was Dugis; that, I think, is about eleven miles up.

Q. Is that the furtherest one?

A. I think at that time that was the furtherest one.

Q. As I understand, in respect to these planters, they delivered at these stations that you mentioned?

A. Yes, sir.

Q. Did not deliver in Aspinwall?

A. No, sir.

Q. What portion of the bananas that you imported came from those plantations on these invoices?

A. I cannot tell.

Q. Can you tell, without getting at it accurately; can you tell substantially what were the chief plantations from which you obtained these bananas?

A. The larger portion of them came from that direction.

By Mr. TREMAIN:

Q. There were two lines of steamers and one railroad?

A. Yes, sir.

Q. And the lines of steamers were competitors, were they not?

A. Yes, sir.

Q. They were competitors for your business?

A. Not so much for our business as for other business.

Q. You paid for the bananas just the same at one place as you would at another?

A. The aggregate amount was alike.

Q. It was the Aspinwall price, was it not?

84 A. Yes, sir.

Q. And you paid so much per ton for through fruit to New York, didn't you?

A. Yes, sir.

Q. That is the way all this business is conducted?

A. Exactly.

Q. And the duties that you have paid have been upon the Aspinwall price and the labor charges that you have attached to your invoices?

A. Yes, sir.

Q. You have also paid, in addition to that, labor charges as required by the Government as alleged inland transportation charges?

A. Yes, sir.

Q. That is the rate that you paid duty?

A. Yes, sir.

Q. That is against your wish?

A. Exactly.

Q. That is what you had a fight about some time ago?

A. No; not that.

Q. What you had a fight about was the value?

A. Yes, sir; they were dissatisfied about our division of large and small bundles.

Q. They had a reappraisement?

A. Yes, sir.

Q. You had several reappraisements?

A. Eight or nine, I think.

Q. As a matter of result, you won?

A. Yes, sir.

By a JUROR:

Q. If it is in order, I would like to ask a question, and it can, perhaps, be answered by some witness present. The question is this: Did the officer or the department write or instruct the consul at Aspinwall to investigate these charges?

85 Mr. TREMAIN. We cannot look into that. We do not know what that fact may be, but if the gentleman has had the same experience as we have had as counsel for merchants in this city he will find that investigation of consuls have been the cause of more dispute and litigation than perhaps any other one thing in the administration of the revenue laws. I do not know what the fact is.

The JUROR. I would like to have put that question to the witness if he was present, or to any one else who can answer.

The COURT. It could be asked if the witness was here, but he is not here.

Mr. CLARKE. I cannot answer it.

The COURT. There don't seem to be any witness in court who can answer it.

By Mr. CLARKE:

Q. Did your concern sell bananas at wholesale at Aspinwall?

A. No, sir.

Q. Do you know of any concern that does?

A. No, sir.

Q. Do you buy at wholesale at Aspinwall?
A. We do.
Q. From whom?
A. From whoever offers them for sale.
Q. From the planters?
A. Planters or ——
Q. You buy their particular crops?
A. They may have purchased them from other parties. I could not tell you that.

86 Q. Don't you know?
A. No, sir; I don't know.

Q. Don't you know as a matter of knowledge?
A. I have no knowledge on that subject whatever.

The foregoing is in substance all the evidence introduced by the defendant.

The defendant thereupon closed his case and by his counsel renewed his motion for a direction for the defendant upon the whole case, and the same being denied, he then moved specifically for a verdict for the defendant as to the amount claimed in transportation charges; this was also denied, and an exception was taken.

The testimony being closed and the counsel for the respective parties having summed up their case to the jury, the counsel for the defendant then requested the court to charge as follows:

"I. The cost of transportation from the place where the bananas were grown, whether by land or water, to the vessel in which shipment was made to the United States was a part of the dutiable value of the bananas. In this case the plaintiffs seek to recover the whole of the duty exacted on transportation charges. They can do that only by showing that there was no expense on account of transportation, and as they have rested without putting in any evidence to that effect your verdict should be for the defendant so far as the claim on transportation charges is concerned.

87 "II. Expenses for labor incident to the transportation and shipment of the bananas was a part of their dutiable value.

"III. The statement of labor charges made at Aspinwall by the plaintiffs or their agent in the invoices subsequently presented to collector on entry binds the plaintiffs. In other words, they cannot in any event recover on more than the difference between the amount so stated and the amount of labor charges on which duty was taken. In no aspect of the case can they recover on the difference between what have been called in the trial the 'actual' labor charges and the amount of labor charges on which duty was taken.

"IV. The additions of labor charges and transportation charges made by the plaintiffs in their entry bind them and debar them from any recover in this action, unless they were compelled at the time they entered the bananas to make those additions in order to obtain possession of their goods. If they could have got their goods without making those additions and made them merely because they anticipated that if they did not do it the appraiser would add an amount that would carry a penal duty, they cannot recover in this action."

The Court thereupon charged the jury as follows:

88 WHEELER, J.:

GENTLEMEN: You have doubtless understood long before this time in the course of the trial, if you did not before, that the goods were to be charged with duty on their actual market value in the principal markets in the country from which they were imported, with some liability to some additions. The words of the statute are: "The wholesale price of the current market value of the country in its principal markets."

Now, when the goods are entered for duty the price actually paid for the goods by the importer in the country from which they are brought does not control. If he got them at a low price that is his advantage as to the price, but not as to the duty that he has to pay. He has to pay a duty on the market value in the principal markets of that country, although he got them for less. And if he bought them too low and invoiced them at the cost price the collector of the port, by his officers, will add to that price in order to bring them up to the actual market value—usually the wholesale price in the country. So far you will see that the price paid will not control, that it is the market value in the country that controls whatever he may have paid. If he paid too high to enter them or invoice them, he might not have to pay duty on all he did pay on.

89 But that is a different thing and we have nothing to do about that, about the market value in the country. This controversy is not about that, and I mention this merely to show you that the duty on charges is a different thing

Now, there is to be added to that wholesale price or actual market value the cost of getting the goods aboard the ship; that is to be added. We are to notice that it is not what it would reasonably cost, but what it would usually cost, or what would be a fair price for putting goods aboard the ship that is to be added; it is the actual cost. And if the importer had the good luck to get his goods transported to the ship and loaded below what would be a fair price, that is his good fortune. The law does not add anything more to the market value in the country than what it actually cost him. You see the difference between the two. The first value, that is, the market value, of the goods in the country, is to be ascertained, estimated—what it ought to be, what the actual price is; that is to be ascertained as to what it actually is. There is a difference in the two things. But all we have to do with is an addition made to the cost of those bananas for getting them aboard ship.

Now, it is said by the plaintiffs that they were not subject to any inland transportation charges because the market value of the country

90 was such that it would always exclude them; that there was but one port of exportation and that was Aspinwall; and that there was only one market of the country at which there was a market value, and that was Aspinwall, and that would always include the bringing of the bananas to Aspinwall.

As to that I leave it to you to decide upon the evidence in the case; that is, on this question; if Aspinwall was the only market in the country and the market price there would always include the charges for bringing bananas there, then the charges would be in once and should not be put in again. But if not, if there were other general markets in the

country so that it did not include those charges, then they must be added. That is a question for you to decide on the evidence we have in the case.

The bananas had a price—a market price—the market price of the principal markets of that country, and if there was only one market there, so distinct by itself, and that market price always included the bringing of the bananas to that place, then the charges should not be put in, because if they were they would be paid twice. But if that was not the only market, if the transportation price was not included in the market price, then the charges should be put in; that is, the actual cost of bringing them from the place of growth to the place to be shipped should be put in. And you must decide that question on this evidence. If you think that As-
91 pinwall was the only market, so that the transportation charges were in the market price, they should not get in again; if not, they should go in again.

Then there were the labor charges which they did put in for loading these bananas onto the ship, taking them off the cars and putting them on the ship. When they make these exportations from Aspinwall to this country they state that they generally complete the loading of these vessels in the night, and as they were in a hurry they couldn't wait to ascertain what it actually did cost, and so they made an estimate—always large enough, the witness said, to cover what it actually was—and sent that on as the cost, sent it on with the invoice, with the consular approval, to this country, and that came here and the entry was made on that. They can't go back of that to recover anything. What they put in in that way they must stand by. I think they called that four cents for the large and two cents for the small. They complain a little of that, but we leave that all out; they must stand by that.

Now if they were improperly made to pay more for that they are entitled to recover it back, unless they paid it voluntarily. That is a question to be left to you. Did it actually cost them any more than this sum which they sent on to load these from the cars on board the ship, in addition to the transportation charges—if you allow any? If so, as they protested against it, they are entitled to recover it back, unless it was
92 paid voluntarily. This is a question for you to decide on the evidence.

You remember the testimony of Mr. Frank and two or three witnesses as to what it actually did cost, that it was under that sum; and you have heard the testimony of other witnesses that it cost more than that sum. Now, if the collector did not add anything more than it did cost, the plaintiff has got no claim for that. If the collector did add more than it actually cost, then the plaintiff has got a claim for that, unless what he paid was paid voluntarily. I will remark about that by and by.

One more point as to these transportation charges. If I understand it, as to what it actually cost these importers to transport from the inland place to the ship, there is a little confusion in the testimony. One witness testified as I will read to you (I had the stenographer write it out in order that I might read it to you):

"Q. In instances where any expenses for transportation occurred all you paid was reported by the bill of lading, was it not?

"A. In the case of the Pacific Mail steamers we were engaged a specific amount per ton, delivered in New York. In the matter where bananas

came by any steamer of the Atlas Line we were charged so much for transportation from Aspinwall, and so much for transportation inland."

93 If they did not pay anything for putting aboard the ship, if the transportation company paid it and it didn't cost them anything, then nothing should be added. Take the Pacific Mail steamers, or the steamship company, whatever the company was that brought those goods; if they took them from the station on the railroad at precisely the same price they would from Aspinwall, then the goods were free on board to them; that is, it would cost them nothing, so the Government should not add anything. They are to be charged for inland transportation what it did cost them. If it cost them nothing they should be charged nothing.

Now, as to the Atlas Line, I understand they paid for railroad transportations. That was a charge, and unless Aspinwall was so the market of the country that the charge was in before, that should be added now, before they paid the railroad company.

And this is to be remarked, that there is no question of amount of transportation charges in any case where charges were proper. That is, they don't find any fault because they were charged too high, but say they ought not to be charged at all. If anything was charged on any cargo the amount was right. But the question arises whether the charges were proper on these particular cargoes. Perhaps you can sort them out on the evidence and tell the Pacific Mail steamers' from the Atlas, and tell whether they paid internal transportation charges on both;

94 if so, if they did pay them, they ought to be charged, though perhaps not so much as was charged. I am not able to tell from the testimony before me, which the vessels were in the Atlas Line and which were in the Pacific Mail.

Mr. TREMAIN. We will let both the schedules go to the jury.

Mr. CLARKE. I have no objection to that.

The COURT. One thing further is a question for you to decide in this case. It appears in evidence that the invoice was made and sent here, duplicates of it, according to their present claim, as I have now explained to you.

When the entry was made—the entry, you understand, means an entry by paper, in writing—when the entry was made they were required to put down on the entry what they were to pay duty on, and if there were charges that they understood they were to pay duty on they were to put them down, and the entry is what the collector has to work by to make up the duty on.

When this paper was actually passed to the collector, the paper that he acted upon (you have all the papers before you), it had on the paper, the witness says, the items which the collector reckoned just as he reckoned it. The Government says, inasmuch as he put those figures on there, those statements on there, that they are bound by them, that he can't recover them back. He says he put them on there because he was com-

95 pelled to. If that is so he ought not to be estopped from recovering, and here is a question for you on that subject, and you will decide it in this way.

If those statements and figures were put on there because he thought that was the best way, on the whole; if, exercising his own judgment freely, he thought that it was the best way to get along with this to put

it on there and let it go, he can't take it back. It must stand so. If he did it independently of the collector's department, on his own judgment, because he thought that it was the best way to do it, let it stand; then he can't recover anything back. The verdict will have to be for the defendant anyway, if that is so, because it was his own act in putting it on there. The collector assessed the duty just as he made it, and he can't complain.

But one thing further about that: If he was required to do it, or given to understand by some officer in the collector's department that it would be the worse for him, seriously, if he didn't; as, for instance, if the appraiser told him if he didn't put those on there the collector's office would, that the appraiser would, and that he would be exposed to a penalty that would be assessed against him; if he was given to understand by the collector's department, or some officer of it, that if he didn't put these figures on there they should, and make it the worse for him because he didn't, and he would thereby be exposed to a penalty of a larger duty which he
96 would have to pay for not doing it, and he was in that way, for the sake of saving himself from the penalty which they would put upon him beyond what would otherwise be chargeable, induced to put them on, then he is not bound by it. That is, if they got him to put it on in that way, crowded him to put it on in that way, it was the same as if they themselves put it on. If they told him if he did not they should, then they can't say he did it independently; they procured it to be done. Therefore, for the purposes of the question now before us, it must stand the same as if he had left it off and they had put it on.

So, in deciding the case which we have in hand, you can look at that question, if you choose to, and see if this was a voluntary thing which he decided in his own mind, that he had better put it on in that way, take this invoice and add what they claimed should be added and let it go. If he thought he had better do that way than any other, and decided it in his own mind freely, then it has gone and he must stand by it. But if you find he did not do it freely, then you can look further, and see if there was anything put on there that ought not to be. If he was compelled to do it, it ought not to go on, and if he was, the plaintiffs are entitled to recover. And if you decide he is bound by putting that on, that will end the case; you must give a verdict for the defendant. If not, you
97 may look and see if he was compelled to pay more than he ought; if he was compelled to pay transportation charges more than he ought to; and, if so, find a verdict for the right amount.

If they were compelled to pay labor charges more than they ought to pay, find the verdict for the plaintiffs for the right amount of that. If they didn't pay any more than they ought to, transportation or labor charges, then the verdict is for the defendant.

These figures, as I understand them—and I desire counsel to notice the way I have them—are these: The whole amount which the plaintiffs paid more than they ought to pay, as they claim it, is $2,259.74—the plaintiffs whole claim, as I understand it, as it stand' now. Of that sum $2,059.79 is for inland transportation, and $199.95 for labor charges. That is, the plaintiffs claim that they paid for labor to take the banaras off the railroad cars and put them into the ship a sum so much less than the collector assessed them for, that the duty on it would be $199.95, including the

interest. And the plaintiffs claim they paid duty on transportation charges more than they ought to $2,059.79.

You may take the case, and if you find the plaintiffs are not entitled to recover anything because they put that on their entry, return a verdict for the defendant. If you find they have not paid anything extra,
98 return a verdict for the defendant. If you find they are not estopped by putting that on the entry, return a verdict for the plaintiffs for the right sum.

With reference to each of said requests to charge, the court refused to charge except as it had already charged; to which ruling of the court in respect to each of said requests separately defendant's counsel then and there duly excepted.

To that part of the charge where the court charged the jury that "if Aspinwall was the only market in the country, and the market price there would always include the charges for bringing bananas there, then the charges would be in once, and should not be put in again. But if not, if there were other general markets in the country, so that it did not include those charges, then they must be added. That is a question for you to decide upon the evidence we have in the case."

The counsel for the defendant specifically excepted, upon the ground that there was no evidence warranting the jury to find as a fact that the prices mentioned on the invoices included the cost of transportation. To that part of the charge where the court charged that "when the
99 entry was made—the entry, you understand, means an entry by paper, in writing—when the entry was made they were required to put down on the entry what they were to pay duty on, and if there were charges that they understood they were to pay duty on they were to put them down, and the entry is what the collector has to work by to make up the duty on.

When this paper was actually passed to the collector, the paper that he acted upon (you have all the papers before you), it had on the paper, the witness says, the items which the collector reckoned just as he reckoned it. The Government says, inasmuch as he put those figures on there, those statements on there, that they are bound by them, that he can't recover them back. He says he put them on there because he was compelled to. If that is so, he ought not to be estopped from recovering; and here is a question for you on that subject, and you will decide it in this way:

If those statements and figures were put on there because he thought that was the best way, on the whole—if, exercising his own judgment freely, he thought that it was the best way to get along with this, to put it on there and let it go—he can't take it back. It must stand so. If he did it independently of the collector's department, on his own judgment, because he thought that it was the best way to do it, let it stand;
100 then he can't recover anything back. The verdict will have to be for the defendant, any way, if that is so, because it was his own act in putting it on there. The collector assessed the duty just as he made it, and he can't complain.

But one thing further about that: If he was required to do it, or given to understand by some officer in the collector's department that it would be the worse for him, seriously, if he didn't; as, for instance, if the ap-

praiser told him if he didn't put those on there the collector's office would, that the appraiser would, and that he would be exposed to a penalty that would be assessed against him; if he was given to understand by the collector's department, or some officer of it, that if he did'nt put these figures on there they should, and make it the worse for him because he didn't, and he would thereby be exposed to a penalty of a larger duty which he would have to pay for not doing it, and he was in that way, for the sake of saving himself from the penalty which they would put upon him beyond what would otherwise be chargeable, induced to put them on—then he is not bound by it. That is, if they got him to put it on in that way, crowded him to put it on in that way, it was the same as if they themselves put it on. If they told him if he did not they should, then they can't say he did it independently; they procured it to be done. Therefore, for the purpose of the question now before us, it must stand the same as if he had left it off and they had put it on.

101 So, in deciding the case which we have in hand, you can look at that question, if you choose, too, and see if this was a voluntary thing which he decided in his own mind, that he had better put it on in that way, take this invoice and add what they claimed should be added, and let it go. If he thought he had better do that way than any other and decided it in his own mind, freely, then it has gone and he must stand by it. But if you find he did not do it freely, then you can look further and see if there was anything put on there that ought to be. If he was compelled to do it it ought not to go on, and if he was the plaintiffs are entitled to recover. And if you decide he is bound by putting that on that will end the case; you must give a verdict for the defendant. If not, you may look and see if he was compelled to pay more than he ought, if he was compelled to pay transportation charges more than he ought to, and, if so, find a verdict for the right amount.

The counsel for the defendant specifically excepted so far as the definition of compulsion therein given was concerned. The exception was duly allowed.

To that part of the charge where the court charged the jury "that as to the Pacific Mail steamers, or the steamship company, whatever the company was that brought those goods; if they took them from the station on the railroad *as* precisely the same price they would from Aspin-

102 wall, then the goods were free on board to them; that is, it would cost them nothing, so the Government should not add anything. They are to be charged for inland transportation what it did cost them. If it cost them nothing they should be charged nothing."

Counsel for the defendant duly excepted, and the exception was allowed.

Counsel for the defendant thereupon requested the court to charge that with reference to the Pacific Mail steamers, if there was an expense in getting the bananas to Aspinwall, which was paid directly or indirectly by the plaintiffs, it is not material whether they paid in a lump that they did pay to the steamship company, rather than paying one part for transportation merely to the railroad company and the rest to the steamship company; and upon the refusal of the court so to charge, counsel for the defendant then and there duly excepted.

The case was then given to the jury, and shortly after a written inquiry

having been sent by them to the court, they were further charged as follows:

"If Aspinwall is the only market, so that the price at Aspinwall would include internal charges, why, then, it should not be put in again. But if Aspinwall is not the only market, if the principal markets of the country include other places, so that Aspinwall is not the only market, then the fact that the price is fifty cents a bunch at Aspinwall, and also at the other markets, would not cut off the liability to pay the duties on
103 the charge of transportation. That is, where there are several principal markets in the country, the wholesale price in that country is to be fixed by the appraiser here, and then if they are bought at a place in the interior and away from the ports charges are to be added—that is the law—charges are to be added to get it to the port where there are several market places, because there would not be both charges added to the interior market.

"But where there is only one market place, only one that can be called a market place, a principal market, and the price is fixed there so that the price includes the charges, then no charges ought to be added. If there isn't but one principal market, no charges ought to be added to get the cargo to port; but if there are other markets, then transportation must be added;" and a juror having enquired, "What was the principal market of the United States of Columbia at that time?" was told by the court that it was for them to determine.

To that last portion of the direction counsel for the defendant duly excepted, and the exception was duly allowed.

And inasmuch as the matters aforesaid do not appear upon the record or otherwise than by this bill of exceptions, on the prayer of the said defendant, by his counsel, the said judge has, to this bill of exceptions,
104 put his hand as of the 27th day of January, 1885, before the cause was given to the jury.

HOYT H. WHEELER.

(Endorsed:) N. S. 8231. United States circuit court, southern district of New York. The Frank Brothers Company vs. W. H. Robertson, collector. Bill of exceptions. U. S. circuit. Filed Jun. 16, 1885. Timothy Griffith, clerk.

105 Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
aga't
THE FRANK BROTHERS COMPANY, DEFENDANT
in error.
} 8231.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol, in Washington, comes the said plaintiff in error, by William Dorsheimer, his attorney, and says that in the records and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in the form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said
106 judgment ought to have been given for the said plaintiff against the said defendant.

And the said plaintiff prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

W. DORSHEIMER,
Attorney for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court, southern district of New York. William H. Robertson, plff. in error, vs. The Frank Brothers Co., dft. in error. Assgmt. of error. W. Dorsheimer, U. S. attorney, atty.
107 for defendant. Due service of a copy of the within is hereby admitted. New York, Oct. 3, 1885. W. B. Coughty, atty. for plaintiff. U. S. circuit court. Filed Oct. 3, 1885. Timothy Griffith, clerk.

108 UNITED STATES OF AMERICA, *ss:*

To The Frank Brothers Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October, 1885, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf. Dated October 3, 1885.

[SEAL.] ADDISON BROWN,
U. S. D. J.

109 (Indorsed:) 8231. U. S. Supreme Court. William H. Robertson, plaintiff in error, against The Frank Brothers Company, defendant in error. Citation. Wm. Dorsheimer, attorney for plaintiff in error.

Due service of a copy of the within citation is hereby admitted this 3d of October, 1885.

W. B. COUGHTRY,
Attorney for Defendant in Error.

(Indorsement on cover:) No. 397. William H. Robertson, late collector of the port of New York, plaintiff in error, against The Frank Brothers Company. S. New York C. C. U. S. Filed October 15, 1885.